



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 13, 1996

Mr. Kevin McCalla, Director Legal Division
Texas Natural Resource Conservation Commission
P. O. Box 13087
Austin, Texas 78711-3087

OR96-2096

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101700.

The Texas Natural Resource Conservation Commission (the "commission") received an open records request for a variety of information relating to Environ International Corporation's response to a particular RFO. You state that the commission has released some of the requested information to the requestor. However, you claim that the remainder of the requested information may be withheld from the public pursuant to section 552.103(a) of the Government Code. Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), the commission must demonstrate that the requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding, to which the commission is or may be a party. Open Records Decision No. 588 (1991). Although you do not specifically assert how the records submitted for our review relate to anticipated litigation, we have reviewed the entire records and determined that the requested information relates to anticipated litigation for

purposes of section 552.103(a). The requested records may therefore be withheld pursuant to section 552.103 of the Government Code.¹

In reaching this conclusion, however, we note that if the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). Finally, the applicability of section 552.103(a) generally ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records.² If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large loop at the beginning.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref: ID# 101700

Enclosures: Submitted documents

cc: Mr. Steven A. Fleckman
Fleckman & McGlynn
1800 NationsBank Tower
515 Congress Avenue
Austin, Texas 78701-3503
(w/o enclosures)

¹You also assert that the requested information is excepted from required public disclosure based on sections 552.107(1) and 552.111 of the Government Code. Having concluded that the commission may withhold the information from public disclosure pursuant to section 552.103, we need not address these additional claims at this time.

²In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.